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| Adopted | Rejected |
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## COMMITTEE REPORT

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| YES: | 9 |
| NO:  | 1 |

### MR. SPEAKER:

*Your Committee on Judiciary, to which was referred Senate Bill 252, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1       Page 4, between lines 8 and 9, begin a new paragraph and insert:
- 2       "SECTION 6. IC 30-4-2.1 IS ADDED TO THE INDIANA CODE
- 3       AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
- 4       JULY 1, 2002]:
- 5       **Chapter 2.1. Rules for Interpretation of Trusts**
- 6       **Sec. 1. In the absence of a contrary intent appearing in the trust,**
- 7       **a trust shall be construed in accordance with the rules in this**
- 8       **chapter.**
- 9       **Sec. 2. (a) Except as provided in subsection (b), in construing a**
- 10       **trust naming as beneficiary a person described by relationship to**
- 11       **the settlor or to another, a person adopted before:**
- 12               **(1) the person is twenty-one (21) years of age; and**
- 13               **(2) the death of the settlor;**
- 14       **shall be considered the child of the adopting parent or parents and**

1 not the child of the natural or previous adopting parents.

2 (b) If a natural parent or previous adopting parent marries the  
3 adopting parent before the settlor's death, the adopted person shall  
4 also be considered the child of the natural or previous adopting  
5 parent.

6 (c) A person adopted by the settlor after the person becomes  
7 twenty-one (21) years of age shall be considered the child of the  
8 settlor. However, no other person is entitled to establish the  
9 relationship to the settlor through the child.

10 Sec. 3. A provision in a trust that provides, or has the effect of  
11 providing, that a beneficiary forfeits a benefit from the trust if the  
12 beneficiary contests the trust is void.

13 Sec. 4. (a) Except as provided in subsection (b) and section 5 of  
14 this chapter, when a settlor fails to provide in the settlor's trust for  
15 a child who is:

16 (1) born or adopted after the making of the settlor's trust; and

17 (2) born before or after the settlor's death;

18 the child is entitled to receive a share in the trust assets. The child's  
19 share of the trust assets shall be determined by ascertaining what  
20 the child's intestate share would have been under IC 29-1-2-1 if the  
21 settlor had died intestate. The child is entitled to receive a share of  
22 the trust assets equivalent in value to the intestacy share  
23 determined under IC 29-1-2-1.

24 (b) Subsection (a) does not apply to a child of the settlor if:

25 (1) it appears from the trust that the settlor intentionally  
26 failed to provide in the settlor's trust for the child; or

27 (2) when the trust was executed:

28 (A) the settlor had at least one (1) child known to the  
29 settlor to be living; and

30 (B) the settlor devised substantially all of the settlor's  
31 estate to the settlor's surviving spouse.

32 Sec. 5. (a) Except as provided in subsection (b), if at the time of  
33 the making of the trust, the settlor:

34 (1) believes a child of the settlor to be dead; and

35 (2) fails to provide for the child in the settlor's trust;

36 the child is entitled to receive a share in the trust assets. The child's  
37 share of the trust assets shall be determined by ascertaining what  
38 the child's intestate share would have been under IC 29-1-2-1 if the

1 settlor had died intestate. The child is entitled to receive a share of  
 2 the trust assets equivalent in value to the intestacy share  
 3 determined under IC 29-1-2-1.

4 (b) Subsection (a) does not apply to a child of the settlor if it  
 5 appears from the trust or from other evidence that the settlor  
 6 would not have devised anything to the child had the settlor known  
 7 that the child was alive.

8 Sec. 6. If a devise of real or personal property, not included in  
 9 the residuary clause of the trust, is:

10 (1) void;

11 (2) revoked; or

12 (3) lapses;

13 the devise becomes a part of the residue and passes to the residuary  
 14 beneficiary.

15 Sec. 7. (a) As used in this section, "descendant" includes the  
 16 following:

17 (1) A child adopted before the child is twenty-one (21) years  
 18 of age by:

19 (A) the settlor; or

20 (B) the settlor's descendants.

21 (2) A descendant of a child adopted as set forth in subdivision  
 22 (1).

23 (3) A child who is born of the mother out of wedlock, in either  
 24 of the following circumstances:

25 (A) The mother is a descendant of the settlor.

26 (B) The mother is the settlor.

27 (4) If the right of a child born out of wedlock to inherit from  
 28 the father is or has been established in the manner provided  
 29 under IC 29-1-2-7, the child, in either of the following  
 30 circumstances:

31 (A) The father is a descendant of the settlor.

32 (B) The father is the settlor.

33 (5) A descendant of a child born out of wedlock as set forth in  
 34 subdivisions (3) and (4).

35 (b) If:

36 (1) an estate, real or personal, is devised to a descendant of the  
 37 settlor; and

38 (2) the beneficiary:

1           **(A) dies during the lifetime of the settlor before or after the**  
 2           **execution of the trust; and**

3           **(B) leaves a descendant who survives the settlor;**  
 4           **the devise does not lapse, but the property devised vests in the**  
 5           **surviving descendant of the beneficiary as if the beneficiary had**  
 6           **survived the settlor and died intestate.**

7           **Sec. 8. Kindred of the half blood are entitled to receive the same**  
 8           **trust interest that they would have received if they had been of the**  
 9           **whole blood."**

10          Page 4, line 32, strike "This subsection applies only to a trust  
 11          executed after June 30,".

12          Page 4, line 33, strike "1996,".

13          Page 5, line 1, delete ";" and insert ".".

14          Page 5, strike line 2.

15          Page 7, between lines 39 and 40, begin a new paragraph and insert:

16          "SECTION 12. IC 32-1-4.5-3 IS AMENDED TO READ AS  
 17          FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) A nonvested  
 18          property interest is valid if:

19               (1) when the interest is created, the interest is certain to vest or  
 20               terminate not later than twenty-one (21) years after the death of  
 21               an individual then alive; ~~or~~

22               (2) the interest either vests or terminates within ninety (90) years  
 23               after the interest's creation; ~~or~~

24               **(3) the interest is in a trust and:**

25                   **(A) the trust does not:**

26                       **(i) require the accumulation of income; and**

27                       **(ii) suspend the power of alienation;**

28                   **for longer than specified in subdivision (1) or (2); or**

29                   **(B) the trust:**

30                       **(i) does not require the accumulation of income for**  
 31                       **longer than specified in subdivision (1) or (2); and**

32                       **(ii) gives the trustee the power to sell trust assets.**

33               (b) A general power of appointment not presently exercisable  
 34               because of a condition precedent is valid if:

35                   (1) when the power is created, the condition precedent is certain  
 36                   to be satisfied or become impossible to satisfy not later than  
 37                   twenty-one (21) years after the death of an individual then alive;

38                   or

- 1           (2) the condition precedent either is satisfied or becomes  
 2           impossible to satisfy within ninety (90) years after the condition  
 3           precedent's creation.
- 4           (c) A nongeneral power of appointment or a general testamentary  
 5           power of appointment is valid if:
- 6           (1) when the power is created, the power is certain to be  
 7           irrevocably exercised or otherwise to terminate not later than  
 8           twenty-one (21) years after the death of an individual then alive;  
 9           or
- 10          (2) the power is irrevocably exercised or otherwise terminates  
 11          within ninety (90) years after the power's creation; or
- 12          **(3) the power is created in a trust that meets the conditions of**  
 13          **subsection (a)(3).**
- 14          (d) In determining whether a nonvested property interest or a power  
 15          of appointment is valid under subsection (a)(1), (b)(1), or (c)(1), the  
 16          possibility that a child will be born to an individual after the  
 17          individual's death is disregarded."
- 18          Renumber all SECTIONS consecutively.  
             (Reference is to SB 252 as reprinted February 5, 2002.)

**and when so amended that said bill do pass.**

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Representative Sturtz